

STATE OF MICHIGAN
COURT OF APPEALS

ISLAND FERRY SERVICE, INC.,

Plaintiff-Appellant,

v

CITY OF CHEBOYGAN,

Defendant-Appellee.

UNPUBLISHED

April 18, 2006

No. 258939

Cheboygan Circuit Court

LC No. 04-007302-CK

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). We reverse and vacate the trial court's opinion and order, and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant issued a permit to allow plaintiff to operate a ferry at a specified location. Plaintiff asked defendant to force Wayne Duffiney, plaintiff's former agent and now the owner of a competing ferry business, to remove his vessel that blocked plaintiff's access to the dock. The city refused to intervene noting issues over exclusivity and the holder of the license. Ultimately, plaintiff filed this action for breach of contract, breach of license, and unjust enrichment against defendant in the trial court. The trial court granted defendant's motion for summary disposition, reasoning in part that no contract provision existed requiring defendant to affirmatively oust a third party. On appeal, plaintiff effectively asks this Court to discern the parties' intent from the circumstances of the case and conclude that defendant was contractually obligated to enforce its ordinances and regulations against third parties.

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). However, after our de novo review, we have concluded that the record is wholly insufficient for us make any determinations on appeal. Therefore, we reverse and vacate the trial court's opinion and order, and remand the case to the trial court with instructions to determine if either an express or implied contract exists by virtue of a license granted by defendant. If the trial court is satisfied that the record evidence displays that a contract indeed exists, then the trial court must determine whether a party has breached that contract. If the trial court finds that no contract exists, then the trial court must address plaintiff's unjust enrichment claim asserted in its complaint.

In making these determinations factual development will be necessary. We direct the trial court to allow both factual and legal development regarding who or what entity is actually licensed to operate a ferry at the specified location, and whether that license is an exclusive license. In order to make these factual and legal determinations, we counsel the trial court that it may consider joining Duffiney or any other interested and necessary third parties into the action. The trial court may also want to consider mandamus, or other equitable relief as requested in the complaint. After factual and legal development, the trial court may then reach the matter, either on a party's motion for summary disposition if there remains no material factual dispute, or trial of the matter.

Reversed, vacated, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio